

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ORDER NO. 98-057

CEASE AND DESIST ORDER
REQUIRING
CITY OF LIVINGSTON
WASTEWATER TREATMENT FACILITY
MERCED COUNTY
TO CEASE AND DESIST FROM
DISCHARGING WASTE CONTRARY TO REQUIREMENTS

The California Regional Water Quality Control Board, Central Valley Region, (hereafter Board) finds that:

1. The City of Livingston (Discharger) owns and operates a wastewater treatment facility (WWTF) for the treatment of domestic wastewater. The WWTF is approximately two miles west of the City, immediately south of the Merced River, and in Section 22, T6S, R11E, MDB&M.
2. Wastewater treatment is provided by a prechlorination system for controlling odors, headworks with mechanical bar screens, and a primary clarifier. Final effluent is discharged to four evaporation/percolation ponds. The ponds are in an "upper" area totaling approximately 24 acres and are outside of the 100-year flood plain of the Merced River. Three additional ponds are in a "lower" area that lies within the 100-year flood plain of the Merced River. The three lower ponds are only supposed to be used for maintenance or emergency disposal and only after prior notification to the Board.
3. The design capacity of the WWTF is 1.8 million gallons per day (mgd). Monthly average flows from the facility range from 0.7 to 0.8 mgd.
4. Waste Discharge Requirements (WDRs) Order No. 89-066, adopted by the Board on 28 May 1989, prescribes requirements for the discharge of treated wastewater from the WWTF. Order No. 89-066 specifies, in part, the following:

"A. Discharge Prohibitions:

- "1. The direct discharge of wastes to surface waters or surface water drainage courses is prohibited.

"B. Discharge Specifications:

- "1. Neither the treatment nor the discharge shall cause a pollution or nuisance as defined by the California Water Code, Section 13050.
- "2. The discharge shall not cause degradation of ground or surface waters.

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“3. The discharge shall remain within the designated disposal area at all times.

“5. A minimum freeboard of one (1) foot shall be maintained in each pond at all times.

“7. The by-pass of waste shall be permitted to the four low level ponds only on an as needed basis during emergency conditions and during the drying and discing of an evaporation/percolation pond with prior notification of the Regional Board staff.

“C. Provisions

“4. The Discharger shall comply with the Standard Provisions and Reporting Requirements, dated 1 September 1985, which are a part of this Order.

“7. The Discharger shall notify Regional Board staff whenever practicable, for any proposed discharge (bypass) to the lower ponds (emergency storage). The Discharger shall file a report detailing the quantity and reason for each bypass discharge to the lower ponds. This report will be included in the monthly monitoring report submitted in the month following the discharge.”

5. The Standard Provisions and Reporting Requirements (dated 1 September 1985), incorporated into Order No. 89-066 through Provision C.4, state, in part, that:

“A. General Provisions

“4. The discharger shall maintain in good working order and operate as efficiently as possible any facility or control system installed by the discharger to achieve compliance with the waste discharge requirements.

“D. Reporting Requirements for Monitoring

“1. The discharger shall file with the Board technical reports on self monitoring work performed according to the detailed specifications contained in any Monitoring and Reporting Program as directed by the Board.

“4. For every item of monitoring data where the requirements are not met, the discharger shall submit a statement of the actions undertaken or proposed which will bring the discharge into full compliance with requirements at the earliest time, and shall submit a timetable for such corrective actions. The discharger shall submit such information, in writing, within two weeks of becoming aware of noncompliance.”

6. The designated beneficial uses of the Merced River are municipal, domestic, industrial, and agricultural supply; recreation; freshwater habitat; fish migration and spawning; and wildlife habitat.
7. On 26 December 1996, the Discharger notified the Board that the capacity of the disposal ponds were on the verge of being exceeded, and that discharge to the Merced River, a water of the United States and of the State, was necessary to prevent the loss of the WWTF pond levees.
8. On 27 December 1996, Board staff inspected the WWTF and found all seven ponds full and a few with less than six inches of freeboard. Board staff observed that, absent other alternatives, direct discharge to the Merced River was inevitable.
9. A 24 January 1997 Notice of Violation (NOV) letter to the Discharger summarized the violations and threatened violations observed during the 27 December 1996 inspection. The NOV, among other things, directed the Discharger to complete and submit the following to the Board:
 - By 18 March 1997, a report describing a short term plan and schedule for adding interim capacity to the WWTF to resolve disposal problems, maintain a minimum of one foot of freeboard, and limit discharges to the lower ponds.
 - By 19 May 1997, a technical report (engineering report) prepared by a California registered civil engineer and containing a plan and schedule for providing additional WWTF capacity for the future, including a supporting water balance based on a 100-year annual rainfall season and on-site soil percolation test data.
 - Daily monitoring of the discharged effluent and the Merced River upstream and downstream of the discharge for total and fecal coliform organisms.

The Discharger reported that a total of 6.0 million gallons of effluent was discharged to the Merced River on 24, 26, 27, 28, 29, 30, and 31 January 1997 and on 3 February 1997. The Discharger made additional discharges of effluent to the Merced River from 3 March to 14 March 1997 totaling 10.4 million gallons.

10. On 10 March 1997, the Board notified the Discharger that if it needs additional time for the technical report, it must submit justification by 25 March 1997 and include an estimate

on how much time is needed so that it can assure adequate WWTF capacity prior to the 1997-98 rainfall season.

11. The Discharger never submitted the justification for an extension nor the engineering report evaluating the capacity of the WWTF. Instead, by letter dated 11 September 1997, the Discharger informed the Board that its consultant determined in July 1997 that the pond bottoms were sealed with organic materials. The Discharger also stated that it dredged its four disposal ponds in early September. The Discharger noted dramatically improved pond percolation rates and stated that the City should make it through the winter without discharging to the Merced River.
12. On 18 November 1997, Board staff inspected the WWTF in response to a telephone call from the Discharger indicating that discharges to the Merced River were again inevitable. Board staff found the WWTF ponds, including the lower ponds, at capacity. On 21 November 1997, the Discharger informed Board staff that the efforts to improve percolation rates by dredging pond bottoms failed, and that emergency discharges to the Merced River were necessary. On 5 December 1997, the Discharger commenced discharging to the Merced River.
13. On 23 December 1997, City informed the Board that it is working on improving conditions at the WWTF. The City proposed a Draft Work Plan to increase capacity at WWTF which included purchasing land for more ponds or obtaining an NPDES permit to discharge to the Merced River in the winter.
14. During late 1996 and 1997, the City frequently discharged effluent to the lower ponds without first notifying the Board of the discharge and without providing a report detailing the quantity and reason for each by-pass with monthly self monitoring reports. The lower ponds contained wastewater throughout this period and was observed during Board staff inspection on 27 December 1996, 10 February 1997, and 18 November 1997.
15. The Discharger failed to provide the total and fecal coliform monitoring data during the January 1997 discharges to the Merced River. In February and March, coliform monitoring proved consistently significant increases in total and fecal coliform in the Merced River as a result of the discharge. Downstream coliform populations exceeded water quality objectives by several orders of magnitude.
16. "Pollution" means an alteration of the quality of the waters of the State by waste to a degree which unreasonable affects (1) such waters for beneficial uses, or (2) facilities which serve such beneficial uses [California Water Code §13050(l)]. The term pollution also includes "Contamination" which means an impairment of the quality of the waters of the State by waste to a degree which creates a hazard to the public health through poisoning or through the spread of disease. "Contamination," includes any equivalent effect resulting from the disposal of waste, whether or not waters of the State are affected [California Water Code §13050(k)].

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17. By formal requests on 22 December 1997 and 6 January 1998, pursuant to section 13267 of the Water Code, the Board again (See Finding No. 9) requested a technical report to investigate and address the causes of reduced percolation rates in ponds and propose remedies to assure sufficient storage and disposal capacity. The report, due 15 February 1998, was not submitted.
18. Based on the information in Finding Nos. 2 through 18, the Discharger is violating and/or threatening to violate Discharge Prohibition No. A.1, Discharge Specification Nos. B.1, B.2, B.3, B.5, and B.7, Provision C.7, and Standard Provision Nos. A.4, D.1, and D.4 of WDRs Order No. 89-066, as described above.
19. Section 13301 of the California Water Code (CWC), states, in part, that:

"When a regional board finds that a discharge of waste is taking place or threatening to take place in violation of requirements or discharge prohibitions prescribed by the regional board or the state board, the board may issue an order to cease and desist and direct that those persons not complying with the requirements or discharge prohibitions (a) comply forthwith, (b) comply in accordance with a time schedule set by the board, or (c) in the event of a threatened violation, take appropriate remedial or preventive action. In the event of an existing or threatened violation of waste discharge requirements in the operation of a community sewer system, cease and desist orders may restrict or prohibit the volume, type, or concentration of waste that might be added to such system by dischargers who did not discharge into the system prior to the issuance of the cease and desist order. Cease and desist orders may be issued directly by a board, after notice and hearing, or in accordance with the procedure set forth in Section 13302."
20. The Board has notified the Discharger and interested agencies and persons of its intent to consider adoption of a Cease and Desist Order and provided them with an opportunity for public hearing and an opportunity to submit their written views and recommendations.
21. The Board, in a public meeting on 27 February 1998, heard and considered all comments pertaining to this Order.
22. Issuing an enforcement action is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, Section 21000, et seq.), in accordance with Title 14, California Code of Regulations, Section 15321.
23. Any person affected adversely by this action of the Board may petition the State Water Resources Control Board to review the action. The petition must be received by the State Board within 30 days of the date on which the Board took action. Copies of the law and regulations applicable to filing petitions will be provided on request.

IT IS HEREBY ORDERED that, pursuant to Section 13301 of the California Water Code, the City of Livingston, its agents, successors, and assigns, shall:

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1. Cease and desist discharging wastes in violation and threatened violation of Waste Discharge Requirements Order No. 89-066. No term or condition of Order No. 89-066, referenced above, is superseded or stayed by this Cease and Desist Order.
2. Comply with Order No. 89-066 no later than specified in the following time schedule:

<u>Task</u>	<u>Compliance Date</u>	<u>Report Due</u>
<u>Short-term</u>		
a. Submit written technical report describing results of thorough investigation into the causes of reduced percolation rates and recommending proposed remedies to restore percolation to the extent feasible.		15 May 98
b. Begin implementation of remedy.	15 Aug 98	1 Sep 98
c. Complete short-term improvements, submit certification of design capacity, noting whether it is sufficient to comply with Order No. 89-066 for existing flow.	30 Nov 98	15 Dec 98
<u>Long-term</u>		
d. Complete a study and submit a report on projected flows at the WWTF for at least a 10-year period, and on necessary design capacity for that period (including a water balance for the disposal). The water balance shall be based on realistic percolation rates and useable evaporation pond capacity, and total annual precipitation with a return frequency of 100 years. The report should address the solution for assuring adequate long-term disposal capacity.		15 Jun 98
e. Submit a project report with details of any necessary modification or expansion of the WWTF.		15 Dec 98
f. Complete Environmental Impact Report		15 Apr 99
g. Submit a report certifying that funding has been secured for capital improvements for long-term remedy.		1 May 99
h. Complete Design		15 Aug 99
i. Begin Construction	1 Oct 99	15 Oct 99
j. Submit written status report		15 Feb 2000

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| k. | Submit written status report | | 15 Jun 2000 |
| l. | Complete Construction | 15 Oct 2000 | 1 Nov 2000 |
| m. | Full Compliance | 15 Nov 2000 | 1 Dec 2000 |
3. To demonstrate commitment to minimize wastewater generation to extent practicable until capacity issues are resolved, submit evidence by **15 May 1998** that an effective municipal moratorium on new connections to the WWTF has been adopted.

Technical reports, construction, and modifications to the WWTF shall be prepared and overseen by a civil engineer registered in the State of California and experienced in the design of wastewater treatment and disposal facilities. All reports and plans are subject to the approval of the Executive Officer.

If, in the opinion of the Executive Officer, the Discharger violates this Order, the Executive Officer may apply to the Attorney General for judicial enforcement or issue a compliant for Administrative Civil Liability.

I, GARY M. CARLTON, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, Central Valley Region, on 27 February 1998.

GARY M. CARLTON, Executive Officer

RTG:rtg/fmc AMENDED 2/27/98